

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MASS ENGINEERED DESIGN, INC.
Plaintiff and Counterclaim Defendant,

v.

SPACECO BUSINESS SOLUTIONS, INC.
Defendant,

v.

JERRY MOSCOVITCH
Counterclaim Defendant

C. A. No.: 6:14-cv-00411-LED

JURY TRIAL DEMANDED

UNOPPOSED MOTION FOR DISMISSAL WITHOUT PREJUDICE

Defendant SpaceCo Business Solutions, Inc. asks the Court to dismiss its counterclaims against Counterclaim Defendant Jerry Moscovitch, as authorized by Federal Rule of Civil Procedure 41(a)(2).

A. Introduction

1. Plaintiff is Mass Engineered Design, Inc. Defendant is SpaceCo Business Solutions, Inc. Counterclaim Defendant is Jerry Moscovitch.
2. On July 16, 2014, SpaceCo Business Solutions, Inc. ("SpaceCo") filed its Defendant SpaceCo Business Solutions, Inc.'s Answer, Affirmative Defenses, And Counterclaim To Plaintiffs' Complaint For Patent Infringement in which it asserted a counterclaim against Jerry Moscovitch ("Moscovitch").
3. SpaceCo seeks a dismissal without prejudice of its Counterclaims against Counterclaim Defendant Moscovitch, pursuant to Fed. R. Civ. P. 41(a)(2).

B. Argument

4. In the Fifth Circuit, "as a general rule, motions for voluntary dismissal [under Rule 41(a)(2)] should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit." *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002); *see* Fed. R. Civ. P. 41(a)(2); *Cone v. W. Va. Pulp & Paper Co.*, 330 U.S. 212, 217 (1947).

5. Neither Moscovitch nor Mass Engineered Design, Inc. will be prejudiced by the requested dismissal. *Espinoza v. Nacher Corp.*, 2007 U.S. Dist. LEXIS 38233, 2007 WL 1557107 (E.D. Tex. May 24, 2007). Moscovitch has neither been served nor made an appearance in this civil action. The requested dismissal will not deny Plaintiff Mass Engineered Design, Inc. any relief it seeks or to which it is entitled, and this requested dismissal will not deny or impede Mass Engineered Design, Inc.'s ability to prosecute its claims.

6. Moscovitch has not answered or otherwise appeared in this matter and has not filed a summary judgment motion.

C. Conclusion

For the reasons set forth above, Defendant and Counter-Plaintiff SpaceCo Business Solutions, Inc. asks the Court to dismiss its Counterclaims against Counterclaim Defendant Jerry Moscovitch without prejudice.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant and Counter-Plaintiff SpaceCo Business Solutions, Inc. prays that the Court to dismiss its Counterclaims against Counterclaim Defendant Jerry Moscovitch without prejudice.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF CONFERENCE

I hereby certify that attorney Scott E. Stevens conferred on November 5, 2014, with counsel for Plaintiff Mass Engineered Design, Inc., in person regarding SpaceCo's Motion for Voluntary Dismissal Without Prejudice Counsel for SpaceCo complied with the meet and confer requirement in Local Rule CV-7(h). Counsel for Plaintiff Mass Engineered Design, Inc., do not oppose this motion.



Scott E. Stevens

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 7th day of November, 2014.



Scott E. Stevens